

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Applications of

WorldCom, Inc. and its Subsidiaries,
As Debtor in Possession,
Assignor

AND

WorldCom, Inc. and its Subsidiaries
Assignee

For Consent to Assign Commission
Licenses

WC Docket No. 02-215

**SBC’S OPPOSITION TO MARGARET F. SNYDER’S
MOTION TO DISCLOSE DOCUMENTS**

SBC Communications, Inc. (“SBC”) opposes the Motion to Disclose Documents (“Motion to Disclose”) filed by counsel for Margaret F. Snyder on December 1, 2003, requesting that the bankruptcy settlement agreement between WorldCom and SBC (“Settlement Agreement”) be made publicly available. As the Commission has already determined, the Settlement Agreement contains confidential commercial information subject to Exemption 4 of the Freedom of Information Act (“FOIA”), and counsel for Ms. Snyder offers no basis for rescinding or reversing that determination.

Exemption 4 of the FOIA requires federal agencies to withhold from public disclosure confidential or privileged commercial and financial information of a person

unless there is an overriding public interest requiring disclosure. In its request for confidentiality accompanying its submission of the Settlement Agreement to the Wireless Bureau,¹ and in its objection to the request by counsel for Ms. Snyder for a copy of the Settlement Agreement,² SBC demonstrated that the Settlement Agreement contains confidential commercial information subject to Exemption 4 of the FOIA. Under *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.³ By its own terms—which were approved by the Bankruptcy Court—the settlement agreement is not available to the public. Accordingly, Exemption 4 dictates that the Settlement Agreement is not subject to disclosure by the Commission.

The settlement agreement also fulfills the “competitive harm” prong of the *National Parks* test, which requires that information that is not voluntarily submitted should be withheld if it is typically withheld by a company and risks harming the competitive position of the person whose information has been provided to the agency.⁴ The Settlement Agreement contains information pertaining to the business relationships between WorldCom and SBC, as well as details of the settlement reached between the

¹ Letter from Jim Lamoureux, Senior Counsel, SBC, to Marlene Dortch, Secretary, FCC, October 3, 2003.

² Letter from Jim Lamoureux, Senior Counsel, SBC, to Marlene Dortch, Secretary, FCC, November 13, 2003.

³ *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992). The term “commercial” has a broad meaning under the FOIA, *see, e.g., Public Citizen Health research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *American Airlines, Inc. v. National Mediation Bd.*, 588 F.2d 863, 870 2d Cir. 1978), and the settlement agreement clearly falls within the scope of the term as used in the FOIA.

⁴ *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

two carriers. Public disclosure of the Settlement Agreement would provide existing and potential competitors with competitively sensitive information regarding the details of SBC's settlement with WorldCom. As such, the Settlement Agreement is protected from disclosure pursuant to the terms of the FOIA and the Commission's rules. The information also satisfies the additional prong of *National Parks* concerning impairment of the government's ability to obtain necessary information in the future.⁵ Disclosure of the Settlement Agreement would certainly impair the Commission's ability to obtain such information in the future.

The protective procedures established by the Commission and other governmental agencies recognize the need to keep such information confidential to the maximum extent possible. The Commission has pledged that it is "sensitive to ensuring that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage."⁶ And Commission precedent has clearly found information pertaining to the business operations of carriers to be competitively sensitive and withholdable under Exemption 4.⁷

⁵ *Id.*

⁶ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, FCC 98-184 ¶ 8 (Aug. 4, 1998).

⁷ See e.g. *In Matter of Pacific Bell Telephone Company Petition for Pricing Flexibility for Special Access and Dedicated Transport Services*, CCB/CPD No. 00-23, DA 00-2618, November 20, 2000 (supporting confidentiality for collocation data); *Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*; *Southwestern Bell Telephone Company*, 13 FCC Rcd 13615 (1998)(keeping administrative operating expenses confidential because it would provide insight into business strategies); *AT&T/McCaw Merger Applications* 9 FCC Rcd 2610 (1994)(keeping confidential accounting records showing account balance information); *NAACP Legal Defense Fund on Request for Inspection of Records* 45 RR 2d 1705 (1979)(keeping confidential records

Courts also have recognized that settlement agreements and related documents constitute privileged information under Exemption 4.⁸ In addition, the power of a court to seal settlement documents “takes precedence over FOIA rules that would otherwise allow those documents to be disclosed.”⁹

Moreover, there is a substantial public interest in preserving the integrity of the settlements of the WorldCom bankruptcy litigation. WorldCom successfully confirmed its bankruptcy cases on October 31, 2003. In the Settlement Agreement, SBC waived its rights to oppose the confirmation process. In addition to the potential competitive disadvantage that would result from the release of the settlement agreement, SBC may be subject to a collateral attack by dissatisfied WorldCom creditors. This could ultimately delay or perhaps prevent SBC’s receipt of the negotiated settlement funds. Given the current status of the WorldCom bankruptcy cases, SBC would have insufficient legal redress available in the Bankruptcy Court and thus would be irreparably harmed. Disclosure thus presents the possibility of unraveling the bargained for settlement reached between SBC and WorldCom.

In his Motion to Disclose, counsel for Ms. Snyder fails to address these considerations. Critically, he fails to address the fact that the Commission has already determined that the Settlement Agreement contains confidential commercial information

that contained employee salary information); *Mercury PCS II, LLC (Request for Inspection of Records) Omnipoint Corporation (Request for Confidential Treatment of Documents)*, FCC 00-241 (July 17, 2000)(keeping confidential marketing plans and strategy information).

⁸ See *M/A-Com Information Systems, Inc. v. U.S. Dep’t of Health and Human Svcs.*, 656 F. Supp. 691 (D.D.C. 1986).

⁹ *City of Hartford v. Chase*, 942 F.2d 130, 135 (2d Cir. 1991); Cf. *In re Franklin National Bank Securities Litigation*, 92 F.R.D. 468 (E.D.N.Y. 1981), *aff’d* 677 F.2d 230 (1982).

and should not be disclosed to the public. In its *Order* modifying the *Protective Order* in this proceeding, the Commission found:

We agree with SBC that the Settlement Agreement and the Atterbury Declaration, which is derived from the Settlement Agreement, contain confidential financial and commercial information, and that SBC has a *bona fide* interest in ensuring that these documents are not disseminated publicly.¹⁰

Counsel for Ms. Snyder offers no basis for the Commission to reconsider its *Order*. For that reason, and all of above-stated reasons, SBC respectfully requests that the Motion to Disclose be denied.

Respectfully submitted,

/s/ Jim Lamoureux

Jim Lamoureux
Gary L. Phillips
Paul K. Mancini

SBC COMMUNICATIONS INC.
1401 Eye Street, N.W., Suite 400
Washington, D.C. 20005
(202) 326-8895 – Voice
(202) 408-8745 – Facsimile

Its Attorneys

¹⁰ Order, *In the Matter of WorldCom, Inc. and its Subsidiaries (debtors-in-possession), Transferor, and MCI, Inc., Transferee, Applications for Consent to Transfer and/or Assign Authorization and Licenses*, WC Docket No. 02-215, DA 03-3745 ¶ 7 (Nov. 21, 2003).

CERTIFICATE OF SERVICE

I, Lacreteria Hill, hereby certify that on this 10th day of December, 2003, a true and correct copy of SBC's Opposition to Margaret F. Snyder's Motion to Disclose Documents in the matter of *WC Docket No. 02-215* has been forwarded to the following via electronic or United States Postal Service first class mail:

Dennis W. Guard
Richard S. Whitt
1133 19th Street, NW
Washington, D.C. 20036
Dennis.Guard@mci.com

Richard Arsenault
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
richard.arsenault@fcc.gov

Gary S. Smithwick
Arthur V. Belendiuk
Smithwick & Belendiuk
Counsel to Margaret F. Snyder
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016
abelendiuk@fccworld.com

Howard J. Barr, Esquire
Womble, Carlyle, Sandridge & Rice
1401 Eye Street, NW
Seventh Floor
Washington, DC 20005
Counsel for Office of Communications
of the United Church of Christ
hbarr@wcsr.com

Stephen L. Earnest, Esquire
675 West Peachtree Street, NE
Suite 4300
Atlanta, GA 30375
Counsel for BellSouth
Telecommunications, Inc.
stephen.ernest@bellsouth.com

Ann H. Rakestraw, Esquire
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
Counsel for Verizon
ann.h.rakestraw@verizon.com